

**ASSEMBLY BILL**

**No. 755**

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**Introduced by Assembly Member De La Torre**

February 18, 2005

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An act to amend Section 226.7 of the Labor Code, relating to compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 755, as introduced, De La Torre. Compensation: piece rate agricultural and garment workers: rest periods.

Existing law prohibits an employer from requiring an employee to work during any meal or rest period mandated by an order of the Industrial Welfare Commission and establishes penalties for an employer's failure to provide a mandated meal or rest period.

This bill would require employers to pay employees for any rest period mandated by statute, regulation, or order of the Industrial Wage Commission, and would provide that the rate of pay for the rest periods of piece-rate workers in the agricultural and garment industries shall be the average piece-rate wage, defined and limited as specified. The bill would also provide that an employee working on a piece-rate basis who suffers injury as a result of the failure of an employer to pay required wages for rest periods is entitled to recover his or her unpaid average piece-rate wage for each rest period in any pay period in which a violation occurred.

Under existing law, the wages earned and unpaid at the time an employee quits or is discharged continue as a penalty to the employer at the same wage rate from the due date until paid or until an action therefor is commenced for up to 30 days.

This bill would provide that these penalties shall not apply to an employer failing to pay required wages for rest periods unless the employer has failed to do so more than 5 times in a 12-month period.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 226.7 of the Labor Code is amended to  
2 read:

3 226.7. (a) No employer shall require any employee to work  
4 during any meal or rest period mandated by an applicable order  
5 of the Industrial Welfare Commission.

6 (b) If an employer fails to provide an employee a meal period  
7 or rest period in accordance with an applicable order of the  
8 Industrial Welfare Commission, the employer shall pay the  
9 employee one additional hour of pay at the employee's regular  
10 rate of compensation for each work day that the meal or rest  
11 period is not provided.

12 (c) (1) *Rest periods mandated by any applicable statute,*  
13 *regulation, or order of the Industrial Welfare Commission shall*  
14 *be counted as hours worked for which there shall be no*  
15 *deduction of wages. Employees working on a piece-rate basis in*  
16 *the agricultural and garment industries shall be compensated for*  
17 *rest periods by being paid their average piece-rate wage during*  
18 *each pay period, or portion of a pay period, in which they were*  
19 *employed on a piece-rate basis.*

20 (2) *An employee working on a piece-rate basis who suffers*  
21 *injury as a result of the failure of an employer to comply with this*  
22 *subdivision is entitled to recover his or her unpaid average*  
23 *piece-rate wage for each rest period in any pay period in which*  
24 *a violation occurred. The penalties arising under Section 203 do*  
25 *not apply to an employer who fails to pay compensation required*  
26 *by this subdivision unless the employer has failed to do so more*  
27 *than five times in a 12-month period.*

28 (3) *This subdivision shall not be construed to require an*  
29 *employer to compensate a piece-rate employee for rest periods*  
30 *during any pay period in which the employee's gross piece-rate*  
31 *pay, averaged on an hourly basis, is more than forty-one dollars*  
32 *(\$41.00) per hour. The Division of Labor Statistics and Research*

- 1 *shall adjust this hourly rate on October of each year, effective*
- 2 *January 1 of the following year, by an amount equal to the*
- 3 *percentage increase in the California Consumer Price Index.*

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